MURPHY PROPERTIES (RIO GRANDE ENGINEERING, AGENT) requests a special exception to Section 14-16-2-20(E) and 14-16-2-15(E)(2)(c) : a VARIANCE of 15 ft to the required 15 ft sideyard setback that is adjacent to the rear yards of a residential zone for all or a portion of Lot 2, North Second Street Business Center zoned M-1, located on 5126 2ND ST NW (F-15)

Special Exception No:............. 17ZHE-80170
Project No:.................................. Project# 1011312
Hearing Date:............................... 09-19-17
Closing of Public Record:........... 09-19-17
Date of Decision:......................... 10-04-17

On the 19th day of September, 2017, RIO GRANDE ENGINEERING ("Agent") acting as agent on behalf of the property owner MURPHY PROPERTIES ("Applicant") appeared before the Zoning Hearing Examiner ("ZHE") requesting a variance of 15 ft to the required 15 ft side yard setback that is adjacent to the rear yards of a residential zone ("Application") upon the real property located at 5126 2ND ST NW ("Subject Property"). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 15 ft to the required 15 ft side yard setback that is adjacent to the rear yards of a residential zone.

2. The City of Albuquerque Zoning Code of Ordinances Section 14-16-4-2 (C)(2) (Special Exceptions – Variance) reads: “A variance application shall be approved by the Zoning Hearing Examiner, if and only if, the Zoning Hearing Examiner finds all of the following:

   (a) The application is not contrary to the public interest or injurious to the community, or to property or improvements in the vicinity;

   (b) There are special circumstances applicable to the subject property which do not apply generally to other property in the same zone and vicinity such as size, shape, topography, location, surroundings, or physical characteristics created by natural forces or government action for which no compensation was paid;

   (c) Such special circumstances were not self-imposed and create an unnecessary hardship in the form of a substantial and unjustified limitation on the reasonable use or return on the property that need not be endured to achieve the intent and purpose of the Zoning Code (§14-16-1-3) and the applicable zoning district; and

   (d) Substantial justice is done.”

3. The Applicant bears the burden of ensuring there is evidence in the record supporting a finding that the above criteria are met under Section 14-16-4-2(C).
4. This matter was deferred from the August 15, 2017 ZHE agenda and referred to the
land use facilitation program to allow the Applicant and a concerned abutting
neighbor to resolve certain concerns with the proposal.
5. The parties were able to come to a resolution on their own without the need for a
facilitated meeting.
6. The agreement of the parties is evidence of lack of injury, as is the statement from the
Greater Gardner Neighborhood Association that the Application “does not seem
problematic.”
7. The ZHE finds that with the below conditions of approval and with the agreement of
the parties the proposed variance will not interfere with the views, light or access of
other residents or impact neighborhood character or security. The site plan as
proposed is appropriate in the context of the surrounding development.
8. The proposal will avoid an unused, fenced area that would be unsightly and
potentially present problems with weeds, litter or other undesirable aspects of unused
property. The proposal also allows the buildings themselves to function as a perimeter
fence, minimizing resource use and potentially offering greater privacy.
9. The ZHE therefore finds that Application is not: (i) contrary to the public interest, (ii)
injurious to the community; or (iii) injurious to the property or improvements located
in the vicinity as required by Section 14-16-4-2(C)(2)(a).
10. The ZHE finds that there are special circumstances applicable to the Subject Property
which do not apply generally to other property in the same zone and vicinity such as
size, shape, topography, location, surroundings, or physical characteristics created by
natural forces or government action for which no compensation was paid, as required
by Section 14-16-4-2(C)(2)(b).
11. Specifically, the ZHE finds that the unusual mixture of zoning districts adjacent to the
subject property presents a special circumstance.
12. The ZHE finds that such special circumstances were not self-imposed and create an
unnecessary hardship in the form of a substantial and unjustified limitation on the
reasonable use or return on the property that need not be endured to achieve the intent
and purpose of the Zoning Code (§14-16-1-3) and the applicable district, as required
by Section 14-16-4-2(C)(2)(c).
13. The ZHE finds that substantial justice will be done if this Application is approved, as
required pursuant to Section 14-16-4-2(C)(2)(d).
14. The ZHE finds that the proper “Notice of Hearing” signage was posted for the
required time period as required by Section 14-16-4-2(B)(4).
15. The ZHE finds that the Applicant has authority to pursue this Application.

CONCLUSIONS OF LAW:

The criteria within Section 14-16-4-2(C)(2) of the Albuquerque Zoning Code are
satisfied.

DECISION:

APPROVAL WITH CONDITIONS of a variance of 15 ft to the required 15 ft sideyard
setback that is adjacent to the rear yards of a residential zone.
CONDITIONS OF APPROVAL:

1. A 12-foot CMU wall will be constructed at the lot line of lots owned by the affected neighbor, Carolus Osborn.
2. Drainage will not be directed onto the properties of Mr. Osborn.

If you wish to appeal this decision, you must do so by October 19, 2017, in the manner described below. A non-refundable filing fee will be calculated at the Planning Department’s Land Development Coordination counter and is required at the time the Appeal is filed.

Appeal is to the Board of Appeals within 15 days of the decision. A filing fee of $105.00 shall accompany each appeal application, as well as a written explanation outlining the reason for appeal and a copy of the ZHE decision. Appeals are taken at 600 2nd Street, Plaza Del Sol Building, Ground Level, Planning Application Counter located on the west side of the lobby. Please present this letter of notification when filing an appeal. When an application is withdrawn, the fee shall not be refunded.

An appeal shall be heard by the Board of Appeals within 45 days of the appeal period and concluded within 75 days of the appeal period. The Planning Division shall give written notice of an appeal, together with a notice of the date, time and place of the hearing to the applicant, a representative of the opponents, if any are known, and the appellant.

Please note that pursuant to Section 14. 16. 4. 4. (B), of the City of Albuquerque Comprehensive Zoning Code, you must demonstrate that you have legal standing to file an appeal as defined.

You will receive notice if any other person files an appeal. If there is no appeal, you can receive building permits any time after the appeal deadline quoted above, provided all conditions imposed at the time of approval have been met. However, the Zoning Hearing Examiner may allow issuance of building permits if the public hearing produces no objection of any kind to the approval of an application. To receive this approval, the applicant agrees in writing to return the building permit or occupation tax number.

Successful applicants are reminded that other regulations of the City must be complied with, even after approval of a special exception is secured. This decision does not constitute approval of plans for a building permit. If your application is approved, bring this decision with you when you apply for any related building permit or occupation tax number. Approval of a conditional use or a variance application is void after one year from date of approval if the rights and privileges are granted, thereby have not been executed or utilized.
cc: Zoning Enforcement
    ZHE File
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